

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Ser. No. 76/245,902 – OG 12/11/01

SAVATAR, INC.

Opposer,

v.

SAVITAR CORPORATION,

Applicant.

Opposition No. 124,976

**OPPOSER'S RESPONSE TO APPLICANT'S
SECOND SUPPLEMENTAL SET OF INTERROGATORIES**

Opposer hereby responds to Applicant's Second Supplemental Set of Interrogatories by submitting the following responses and objections.

Opposer's responses are made without waiving or intending to waive any objections as to relevancy, privilege, or admissibility of any information provided in response to Applicant's first set of interrogatories in any subsequent proceeding or at the trial of this or any other action, on any ground. A partial answer to any interrogatories that have been objected to, in whole or in part, is not intended to be a waiver of the objection.

GENERAL OBJECTIONS

1. Opposer objects to any interrogatory that seeks the discovery of information subject to the attorney-client privilege and/or work product immunity.

2. Opposer objects to Applicant's Second Supplemental Set of Interrogatories to the extent that it seeks information or documents which are privileged, confidential, highly proprietary, and/or trade secret information of Opposer.

3. Opposer objects to Applicant's Second Supplemental Set of Interrogatories to the extent that it seeks information which is neither relevant to the issues raised in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence.

4. To the extent that Opposer responds to an interrogatory, this should not be construed as a representation or admission that the responses are admissible at trial.

5. Opposer objects to Applicant's Second Supplemental Set of Interrogatories on the ground that it is vague, overbroad and unduly burdensome.

6. Opposer has exercised due and reasonable diligence in responding to Applicant's Interrogatories. Opposer reserves the right to supplement or amend any and all parts of the responses provided herein, and to object to the admissibility in evidence of any of the information contained in the responses, any portion of any document produced in response to Applicant's Interrogatories and any information contained therein.

7. Opposer submits these responses without conceding the relevancy or materiality of the subject matter of any individual interrogatory, response thereto, or document.

8. Opposer objects to each of the requests on the ground that they seek confidential commercial information without the benefit of a protective order. Savatar will not respond to such requests until Applicant executes a Confidential/Confidential – For Attorneys' Eyes Only Protective Order.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1

Identify the individual(s), by name, last known address and relationship to Opposer, with knowledge of Opposer's:

- (a) marketing plans relating to the Opposer's Mark;
- (b) sale of services and products relating to the Opposer's Mark;
- (c) promotion relating to the Opposer's Mark; and
- (d) advertising relating to the Opposer's Mark.

(Your above answer should state the categories of information of which the individual person(s) has knowledge).

ANSWER:

To the extent this request seeks confidential commercial information, such information will not be produced without the receipt of the above-referenced protective order. It is further objectionable because it is overly broad and unduly burdensome. Moreover, information pertinent to this request has already been provided. See Answer to No. 1 of Opposer's Response to Applicant's First Set of Interrogatories.

INTERROGATORY NO. 2

Identify in detail all trademark searches conducted by Opposer prior to its use of its Mark, including all documents generated relating to the search.

ANSWER:

To the extent that this request seeks information protected by the attorney-client privilege or work product doctrine, it is improper. It is further objectionable on the grounds that

it neither relevant to the claim or defense of any party, nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 3

Identify each and every website, catalog or place of business which offers or renders services in connection with Opposer's Mark, or which offers merchandise for sale in connection with Opposer's Mark.

ANSWER:

- (i) www.savitar.com (see page 151 of the T&T search conducted by counsel for Applicant);
- (ii) No catalogs – see paragraph No. 4 of Opposer's Opposition to Applicant's Motion to Compel;
- (iii) Savatar, Inc., 9 Harcourt Street, Boston, MA 02116.

INTERROGATORY NO. 4

State the total number of items or services sold, and dollar amount of sales, by Opposer per year for product(s) and service(s) sold which were identified by Opposer in Opposer's Answers To Applicant's First Set Of Interrogatories and identify documents sufficient to support these figures.

ANSWER:

To the extent this request seeks confidential commercial information, such information will not be produced without the receipt of the executed above-referenced protective order.

It is further objectionable because it is overly broad and unduly burdensome. Moreover, information pertinent to this request has already been provided. See Answer No. 14 of Applicant's First Set Of Interrogatories, and paragraph 3 of Opposer's Opposition to Applicant's Motion to Compel.

INTERROGATORY NO. 5

Identify all advertisements and/or promotional materials which Opposer has used to offer for sale or distribution any products and services sold under Opposer's Mark by stating as to each the name, medium, and date of publication or dissemination, the target audience and the geographic scope of distribution or dissemination of the medium.

ANSWER:

To the extent this request seeks confidential commercial information, such information will not be produced without the receipt of the above-referenced protective order. It is further objectionable because it is overly broad and unduly burdensome. Moreover, information pertinent to this request has already been provided. See Answers to Nos. 1-3 of Opposer's Response to Applicant's First Request for Production of Documents.

INTERROGATORY NO. 6

Describe in detail the manner in which Opposer offers for sale its services and products or solicits business in each of the trade channels identified in Opposer's answer No. 12 to Application's First Set Of Interrogatories.

ANSWER:

To the extent this request seeks confidential commercial information, such information will not be produced without the receipt of the above-referenced protective order. It is further objectionable because it is overly broad and unduly burdensome. Notwithstanding the foregoing objections, information pertinent to this request has already been provided. See Answer to Applicant's Request for Production No. 1 and paragraph No. 4 of Opposer's Opposition to Applicant's Motion to Compel.

INTERROGATORY NO. 7

State the date of first interstate use of the Opposer's Mark by or on behalf of Opposer, the exact nature of that use and identify any documents that relate to such usage on that date.

ANSWER:

To the extent this request seeks confidential commercial information, such information will not be produced without the receipt of the above-referenced protective order. It is further objectionable because it is overly broad and unduly burdensome. Moreover, information pertinent to this request has already been provided. See Notice of Opposition, paragraph No. 2.

INTERROGATORY NO. 8

State the date of first intrastate use of the Opposer's Mark by or on behalf of Opposer, the exact nature of that use and identify any documents that relate to such usage on that date.

ANSWER:

To the extent this request seeks confidential commercial information, such information will not be produced without the receipt of the above-referenced protective order.

It is further objectionable because it is overly broad and unduly burdensome. Moreover, information pertinent to this request has already been provided. See Notice of Opposition, No. 2.

INTERROGATORY NO. 9

Describe in detail all instances known to Opposer in which a person has been confused, mistaken, or deceived as to the identity or source of any of Opposer's products or services.

ANSWER:

To the extent that this request seeks information protected by the attorney-client privilege or work product doctrine, it is improper. It is further objectionable on the grounds that it neither relevant to the claim or defense of any party, nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 10

Describe in detail each incident where Opposer discussed with any person or entity the Opposer's Mark similarity or relation to any mark used by another.

ANSWER:

To the extent that this request seeks information protected by the attorney-client privilege or work product doctrine, it is improper. It is further objectionable on the grounds that it neither relevant to the claim or defense of any party, nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 11

If (other than the present action) Opposer has ever objected to, opposed or challenged (through formal pleadings or otherwise) any third-party use or registration of a mark or designation considered to conflict with Opposer's Mark, state separately for each such opposition or challenge:

- (a) the mark and the person and/or company using such mark;
- (b) the nature of the action taken including the forum involved; and
- (c) the results, if any, of each such action.

ANSWER:

To the extent that this request seeks information protected by the attorney-client privilege or work product doctrine, it is improper. It is further objectionable on the grounds that it neither relevant to the claim or defense of any party, nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 12

If any third party has ever objected to, opposed or challenged (through formal pleadings or otherwise) Opposer's use or registration of Opposer's Mark, state separately for each such opposition or challenge:

- (a) the person and/or company making the objection;
- (b) the nature of the action taken including the forum involved; and
- (c) the results, if any, of each such action.

ANSWER:

See Answer 11 above.

INTERROGATORY NO. 13

Identify each expert witness who will testify on behalf of Opposer by stating the name of the expert, the subject matter on which each expert is expected to testify, the substance of the facts and opinions to which each expert is expected to testify, and a summary of the grounds for each opinion.

ANSWER:

Information pertinent to this request has already been provided. See answer No. 11 of Applicant's First Set Of Interrogatories.

INTERROGATORY NO. 14

Identify all persons who participated in any way in preparation of Opposer's responses to these interrogatories, including each response to which he/she contributed.

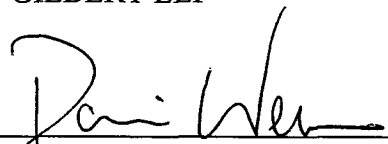
ANSWER:

To the extent this request seeks information protected by the attorney-client privilege, it is improper.

Dated: September 13, 2002
New York, New York

DAVIS & GILBERT LLP

By: _____

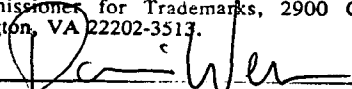


David A. Weems
1740 Broadway
New York, New York 10019
Attorneys for Opposer

CERTIFICATE OF EXPRESS MAIL

Date of Deposit: 9/13/02
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I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

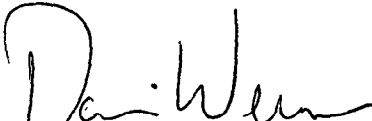

David A. Weems

CERTIFICATE OF SERVICE

I certify that on September 13, 2002, service of a true and complete copy of the foregoing pleading or paper was made upon Applicant's counsel:

Elizabeth B. Searle, Esq.
Stuart & Branigin
300 Main Street, Suite 800
P.O. Box 1010
Lafayette, Indiana 47902-1010

by depositing same in the United States mail in an envelope properly addressed and with sufficient first-class postage affixed.



David A. Weems

TTAB

DAVIS & GILBERT LLP
1740 BROADWAY
NEW YORK, NEW YORK 10019
(212) 468-4800

DIRECT DIAL NUMBER

(212) 468-4889

EMAIL ADDRESS

dweems@dglaw.com

MAIN FACSIMILE

(212) 468-4888



09-16-2002

U.S. Patent & TMO/TM Mail Rpt. Dt. #40

September 13, 2002

VIA EXPRESS MAIL

Commissioner for Trademarks
Box TTAB NO FEE
2900 Crystal Drive
Arlington, VA 22202-3513

Re: Savatar, Inc. v. Savitar Corporation
Ser. No. 76/245,902
Opposition No. 124,976

TRADEMARK TRIAL AND
APPEAL BOARD
02 SEP 23 AM 12:12

Dear Sir:

Enclosed please find an original and one copy of Opposer's Response to Applicant's Second Supplemental Set of Interrogatories regarding the above opposition. Kindly place this document on file and acknowledge receipt by returning the self-addresses stamped postcard.

Date of Deposit 9/13/2002

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I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner for Trademarks 2900 Crystal Drive, Arlington, Virginia 22202-3513.

Signature

David A. Weems

Respectfully,

DAVIS & GILBERT LLP

David A. Weems
Attorneys for Registrant

DAW/ljj
Enclosures